

REMARKS/ARGUMENTS

Prior to this Amendment, the application included claims 30-34, 39, 40, 42 and 44-49. No claims have been amended, added, or canceled. Hence, after entry of this Amendment, claims 30-34, 39, 40, 42 and 44-49 stand pending for examination.

Claims 30-34, 39, 40, 42 and 44-49 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the cited portions of U.S. Patent No. 6,169,894 to McCormick et al. (“McCormick”) in view of the cited portions of U.S. Patent No. 5,650,994 to Daley (“Daley”).

Rejections Under 35 U.S.C. § 103(a)

The Applicants respectfully traverse the rejection of all claims since the Office Action has not established a case of *prima facie* obviousness. The cited references do not teach or suggest all of the claim elements and the Office Action has not established that the cited motivation existed at the time of the invention.

Claim 30, for example, recites, “based upon the determination, establishing a second wireless channel upon which to broadcast the selected media program to the second wireless handset, wherein the second wireless channel is different than the first wireless channel.” Daley is cited for this teaching, specifically, Daley’s teaching of “staggercast” at col. 53, ll. 1-10. At that location, Daley teaches that staggercast “provides a broadcast of a particular program on a regular interval basis, such as every 15 minutes, over multiple channels . . .” Daley does not, however, teach that broadcasting on a second wireless channel is based on a determination of whether the second wireless handset is in a cell site coverage area. In other words, Daley appears to teach broadcasting on multiple channels without regard to any particular determination, which is a waste of bandwidth in addition to failing to teach the recited claim element. Hence, claim 30 is believed to be allowable, at least for this reason. Claim 40 includes a similar element and is believed to be allowable for at least the same reason. The remaining claims depend from one of these independent claims and are believed to be allowable, at least for the foregoing reasons.

Moreover, the Office Action has not established that the alleged motivation existed at the time of the Applicants' invention. The assertion that this motivation existed at the time of the Applicants' invention appears to be based on facts within the personal knowledge of the Examiner. Hence, the Applicants respectfully request compliance with 37 C.F.R. § 1.104(d)(2). In the absence of such, the Applicants maintain that all pending claims are allowable, at least for this additional reason.

Conclusion

In view of the foregoing, the Applicants believe all claims now pending in this application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

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